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07 SEP 18 AM 11:40

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: *ll*

DEPUTY

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Attorney for Plaintiffs
ATLANTIC RECORDING CORPORATION;
SONY BMG MUSIC ENTERTAINMENT;
WARNER BROS. RECORDS INC.; ARISTA
RECORDS LLC; BMG MUSIC; MAVERICK
RECORDING COMPANY; UMG
RECORDINGS, INC.; and CAPITOL RECORDS,
INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

'07 CV 1824 J *JMA*

ATLANTIC RECORDING CORPORATION, a
Delaware corporation; SONY BMG MUSIC
ENTERTAINMENT, a Delaware general partnership;
WARNER BROS. RECORDS INC., a Delaware
corporation; ARISTA RECORDS LLC, a Delaware
limited liability company; BMG MUSIC, a New York
general partnership; MAVERICK RECORDING
COMPANY, a California joint venture; UMG
RECORDINGS, INC., a Delaware corporation; and
CAPITOL RECORDS, INC., a Delaware corporation,

Plaintiffs,

vs.

CHARLES SERRANO,

Defendant.

Case No.:

COMPLAINT FOR COPYRIGHT
INFRINGEMENT

JURISDICTION AND VENUE

1
2 1. This is a civil action seeking damages and injunctive relief for copyright infringement
3 under the copyright laws of the United States (17 U.S.C. §101 *et seq.*).

4 2. This Court has jurisdiction under 17 U.S.C. § 101 *et seq.*; 28 U.S.C. §1331 (federal
5 question); and 28 U.S.C. §1338(a) (copyright).

6 3. This Court has personal jurisdiction over the Defendant, Charles Serrano, and venue in
7 this District is proper under 28 U.S.C. § 1391(b) and (c) and 28 U.S.C. § 1400, because, on
8 information and belief, the Defendant resides in this District and/or a substantial part of the acts of
9 infringement complained of herein occurred in this District.

10 **PARTIES**

11 4. Plaintiff Atlantic Recording Corporation is a corporation duly organized and existing
12 under the laws of the State of Delaware, with its principal place of business in the State of New York.

13 5. Plaintiff SONY BMG MUSIC ENTERTAINMENT is a Delaware general partnership,
14 with its principal place of business in the State of New York.

15 6. Plaintiff Warner Bros. Records Inc. is a corporation duly organized and existing under
16 the laws of the State of Delaware, with its principal place of business in the State of California.

17 7. Plaintiff Arista Records LLC is a limited liability company duly organized and existing
18 under the laws of the State of Delaware, with its principal place of business in the State of New York.

19 8. Plaintiff BMG Music is a general partnership duly organized and existing under the
20 laws of the State of New York, with its principal place of business in the State of New York.

21 9. Plaintiff Maverick Recording Company is a joint venture between SR/MDM Venture
22 Inc. and Maverick Records LLC, organized and existing under the laws of the State of California, with
23 its principal place of business in the State of California.

24 10. Plaintiff UMG Recordings, Inc. is a corporation duly organized and existing under the
25 laws of the State of Delaware, with its principal place of business in the State of California.

26 11. Plaintiff Capitol Records, Inc. is a corporation duly organized and existing under the
27 laws of the State of Delaware, with its principal place of business in the State of New York.
28

12. Plaintiffs are informed and believe that Defendant is an individual who resided in El Cajon, California, within this District at the time of the infringement complained of herein. Upon information and belief, Defendant may still be found in this District.

COUNT I

INFRINGEMENT OF COPYRIGHTS

13. Plaintiffs incorporate herein by this reference each and every allegation contained in each paragraph above.

14. Plaintiffs are, and at all relevant times have been, the copyright owners or licensees of exclusive rights under United States copyright law with respect to certain copyrighted sound recordings, including but not limited to, all of the copyrighted sound recordings on Exhibit A to this Complaint (collectively, these copyrighted sound recordings shall be identified as the “Copyrighted Recordings”). Each of the Copyrighted Recordings is the subject of a valid Certificate of Copyright Registration issued by the Register of Copyrights, for which the Plaintiffs are the owners as specified on Exhibit A.

15. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the exclusive rights to reproduce the Copyrighted Recordings and to distribute the Copyrighted Recordings to the public.

16. Much of the unlawful distribution of copyrighted sound recordings over the Internet occurs via “peer-to-peer” (“P2P”) file copying networks or so-called online media distribution systems. P2P networks, at least in their most popular form, refer to computer systems or processes that enable Internet users to search for files (including audio recordings) stored on other users’ computers and transfer exact copies of files from one computer to another via the Internet, which can include both downloading an exact copy of that file onto the user’s own computer and distributing an exact copy of that file to other Internet users on the same P2P network. P2P networks enable users who otherwise would have no connection with, or knowledge of, each other to provide a sophisticated search mechanism by which users can locate these files for downloading and to reproduce and distribute files off of their personal computers.

1 17. Users of P2P networks who distribute files over a network can be identified by using
2 Internet Protocol ("IP") addresses because the unique IP address of the computer offering the files for
3 distribution can be captured by another user during a search or a file transfer. Users of P2P networks
4 can be identified by their IP addresses because each computer or network device (such as a router) that
5 connects to a P2P network must have a unique IP address within the Internet to deliver files from one
6 computer or network device to another. Two computers cannot effectively function if they are
7 connected to the Internet with the same IP address at the same time.

8 18. Plaintiffs identified an individual using LimeWire on the P2P network Gnutella at IP
9 address 69.237.185.46 on February 8, 2007 at 18:47:06 EST distributing 224 audio files over the
10 Internet. The Defendant was identified as the individual responsible for that IP address at that date and
11 time. Plaintiffs are informed and believe that as of February 8, 2007, Defendant, without the
12 permission or consent of Plaintiffs, had continuously used, and continued to use, a P2P network to
13 download and/or distribute to the public the Copyrighted Recordings. Exhibit A identifies the date and
14 time of capture and a list of Copyrighted Recordings that Defendant has, without the permission or
15 consent of Plaintiffs, downloaded and/or distributed to the public. Through Defendant's continuous
16 and ongoing acts of downloading and/or distributing to the public the Copyrighted Recordings, which
17 acts Plaintiffs believe to have been ongoing for some time, Defendant has violated Plaintiffs' exclusive
18 rights of reproduction and distribution. Defendant's actions constitute infringement of Plaintiffs'
19 copyrights and exclusive rights under copyright.

20 19. In addition to the sound recordings listed on Exhibit A, Plaintiffs are informed and
21 believe that Defendant has, without the permission or consent of Plaintiffs, continuously downloaded
22 and/or distributed to the public additional sound recordings owned by or exclusively licensed to
23 Plaintiffs or Plaintiffs' affiliate record labels, and Plaintiffs believe that such acts of infringement are
24 ongoing.

25 20. Plaintiffs have placed proper notices of copyright pursuant to 17 U.S.C. § 401 on each
26 respective album cover of each of the sound recordings identified in Exhibit A. These notices of
27 copyright appeared on published copies of each of the sound recordings identified in Exhibit A. These
28

1 published copies were widely available, and each of the published copies of the sound recordings
2 identified in Exhibit A was accessible by Defendant.

3 21. Plaintiffs are informed and believe that the foregoing acts of infringement have been
4 willful and intentional, in disregard of and indifference to the rights of Plaintiffs.

5 22. As a result of Defendant's infringement of Plaintiffs' copyrights and exclusive rights
6 under copyright, Plaintiffs are entitled to statutory damages pursuant to 17 U.S.C. § 504(c) for
7 Defendant's infringement of each of the Copyrighted Recordings. Plaintiffs further are entitled to their
8 attorneys' fees and costs pursuant to 17 U.S.C. § 505.

9 23. The conduct of Defendant is causing and, unless enjoined and restrained by this Court,
10 will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated or
11 measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. §§ 502 and
12 503, Plaintiffs are entitled to injunctive relief prohibiting Defendant from further infringing Plaintiffs'
13 copyrights, and ordering Defendant to destroy all copies of sound recordings made in violation of
14 Plaintiffs' exclusive rights.

15 WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

16 1. For an injunction providing:

17 "Defendant shall be and hereby is enjoined from directly or indirectly
18 infringing Plaintiffs' rights under federal or state law in the Copyrighted
19 Recordings and any sound recording, whether now in existence or later
20 created, that is owned or controlled by Plaintiffs (or any parent,
21 subsidiary, or affiliate record label of Plaintiffs) ("Plaintiffs'
22 Recordings"), including without limitation by using the Internet or any
23 online media distribution system to reproduce (i.e., download) any of
24 Plaintiffs' Recordings, to distribute (i.e., upload) any of Plaintiffs'
25 Recordings, or to make any of Plaintiffs' Recordings available for
26 distribution to the public, except pursuant to a lawful license or with the
27 express authority of Plaintiffs. Defendant also shall destroy all copies of
28 Plaintiffs' Recordings that Defendant has downloaded onto any
computer hard drive or server without Plaintiffs' authorization and shall
destroy all copies of those downloaded recordings transferred onto any
physical medium or device in Defendant's possession, custody, or
control."

26 2. For statutory damages for each infringement of each Copyrighted Recording
27 pursuant to 17 U.S.C. § 504.
28

3. For Plaintiffs' costs in this action.
4. For Plaintiffs' reasonable attorneys' fees incurred herein.
5. For such other and further relief as the Court may deem just and proper.

Dated: September 18, 2007

JONATHAN G. FETTERLY
HOLME ROBERTS & OWEN LLP

By: _____

Jonathan G. Fetterly
Attorney for Plaintiffs
ATLANTIC RECORDING CORPORATION;
SONY BMG MUSIC ENTERTAINMENT;
WARNER BROS. RECORDS INC.; ARISTA
RECORDS LLC; BMG MUSIC; MAVERICK
RECORDING COMPANY; UMG
RECORDINGS, INC.; and CAPITOL RECORDS,
INC.

EXHIBIT A**CHARLES SERRANO****IP Address:** 69.237.185.46 2007-02-08 18:47:06 EST**CASE ID#** 117633250**P2P Network:** Gnutella**Total Audio Files:** 224

| <u>Copyright Owner</u> | <u>Artist</u> | <u>Recording Title</u> | <u>Album Title</u> | <u>SR#</u> |
|--------------------------------|-----------------|--------------------------------|------------------------------|------------|
| Atlantic Recording Corporation | Matchbox 20 | Push | Yourself or Someone Like You | 227-755 |
| SONY BMG MUSIC ENTERTAINMENT | Mariah Carey | Hero | Music Box | 178-631 |
| Warner Bros. Records Inc. | Faith Hill | Breathe | Breathe | 276-629 |
| SONY BMG MUSIC ENTERTAINMENT | Celine Dion | It's All Coming Back To Me Now | Falling Into You | 224-159 |
| Arista Records LLC | Santana | Smooth | Supernatural | 289-833 |
| BMG Music | Martina McBride | Valentine | Evolution | 240-332 |
| Maverick Recording Company | Michelle Branch | All You Wanted | The Spirit Room | 303-732 |
| UMG Recordings, Inc. | Vanessa Carlton | Pretty Baby | Be Not Nobody | 313-943 |
| Capitol Records, Inc. | Coldplay | Clocks | A Rush of Blood to the Head | 322-958 |
| Arista Records LLC | Avril Lavigne | Too Much To Ask | Let Go | 312-786 |

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

**# 142575 - KD
* * C O P Y * *
September 18, 2007
11:41:31**

Civ Fil Non-Pris

USAO #: CIVIL FILING; 07CV1824
Judge.: NAPOLEON A JONES, JR
Amount.: \$350.00 CK
Check#: BC 352516

Total-> \$350.00

FROM: ATLANTIC RECORDING CORP., ET A
V. SERRANO
CIVIL FILING

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ATLANTIC RECORDING CORPORATION; SONY BMG MUSIC ENTERTAINMENT; WARNER BROS. RECORDS INC.; ARISTA RECORDS LLC; BMG MUSIC; MAVERICK RECORDING COMPANY; UMG RECORDINGS, INC.; and CAPITOL RECORDS, INC.

(b) County of Residence of First Listed Plaintiff New York County, NY
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Jonathan G. Fetterly (SBN: 228612) Telephone: 213.572.4300
HOLME ROBERTS & OWEN LLP Facsimile: 213.572.4400
777 South Figueroa Street, Suite 2800
Los Angeles, CA 90017-5826

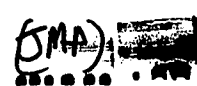
DEFENDANTS 07 SEP 18 AM 11:40
CHARLES SERRANO

County of Residence of First Listed Defendant San Diego
(IN U.S. PLAINTIFF CASES ONLY, FURNISH
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION
OF THE LAND INVOLVED.

BY: 

DEPUTY

Attorneys (If Known)

07 CV 1824 J (JMA) 

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3. Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES | |
|--|--|--|--|--|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury | PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act <input type="checkbox"/> 730 Labor/Mgmt. Reporting <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input checked="" type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW 405(g) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities-Employment <input type="checkbox"/> 446 Amer. w/Disabilities-Other <input type="checkbox"/> 440 Other Civil Rights | PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | | | |

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity)

17 U.S.C. § 501 et seq.

Brief description of the cause: copyright infringement**VII. REQUESTED IN COMPLAINT**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

Statutory damages; injunction

CHECK YES only if demanded in complaint

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions)

JUDGE _____

DOCKET NUMBER _____

DATE September 18, 2007SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT# 142575 AMOUNT \$360 APPLYING IF NO 9/18/07 JUDGE _____ MAG. JUDGE _____